

AMENDED IN SENATE AUGUST 12, 2002

AMENDED IN ASSEMBLY MAY 23, 2002

AMENDED IN ASSEMBLY APRIL 10, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2580

Introduced by Assembly Member Simitian

February 21, 2002

An act to amend Sections 12076 and 12305 of, and to add Sections 12099, 12234, and 12289.5 to, the Penal Code, relating to dangerous weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 2580, as amended, Simitian. Dangerous weapons.

Existing law generally regulates various dangerous weapons, including short-barreled shotguns, short-barreled rifles, machine guns, assault weapons, and destructive devices.

This bill would require, in regard to those devices, that the Department of Justice would, for every person, firm, or corporation to whom a permit is issued relating to the device, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventories of the devices, except as specified. The bill would also provide that, for a person, firm, or corporation with an inventory of fewer than 5 devices that require any Department of Justice permit, the department would conduct an inspection for security and safe storage purposes, and to reconcile inventories, once every 5 years, or more frequently if determined by the department, except as specified.

This bill would provide that the duties it imposes on the department are to be ~~managed within existing budgetary resources~~ *funded* from a specified account.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12076 of the Penal Code is amended to
2 read:

3 12076. (a) (1) Before January 1, 1998, the Department of
4 Justice shall determine the method by which a dealer shall submit
5 firearm purchaser information to the department and the
6 information shall be in one of the following formats:

7 (A) Submission of the register described in Section 12077.

8 (B) Electronic or telephonic transfer of the information
9 contained in the register described in Section 12077.

10 (2) On or after January 1, 1998, electronic or telephonic
11 transfer, including voice or facsimile transmission, shall be the
12 exclusive means by which purchaser information is transmitted to
13 the department.

14 (3) On or after January 1, 2003, except as permitted by the
15 department, electronic transfer shall be the exclusive means by
16 which information is transmitted to the department. Telephonic
17 transfer shall not be permitted for information regarding sales of
18 any firearms.

19 (b) (1) Where the register is used, the purchaser of any firearm
20 shall be required to present clear evidence of his or her identity and
21 age, as defined in Section 12071, to the dealer, and the dealer shall
22 require him or her to sign his or her current legal name and affix
23 his or her residence address and date of birth to the register in
24 quadruplicate. The salesperson shall affix his or her signature to
25 the register in quadruplicate as a witness to the signature and
26 identification of the purchaser. Any person furnishing a fictitious
27 name or address or knowingly furnishing any incorrect
28 information or knowingly omitting any information required to be
29 provided for the register and any person violating any provision of
30 this section is guilty of a misdemeanor.

31 (2) The original of the register shall be retained by the dealer
32 in consecutive order. Each book of 50 originals shall become the



1 permanent register of transactions that shall be retained for not less
2 than three years from the date of the last transaction and shall be
3 available for the inspection of any peace officer, Department of
4 Justice employee designated by the Attorney General, or agent of
5 the federal Bureau of Alcohol, Tobacco, and Firearms upon the
6 presentation of proper identification, but no information shall be
7 compiled therefrom regarding the purchasers or other transferees
8 of firearms that are not pistols, revolvers, or other firearms capable
9 of being concealed upon the person.

10 (3) Two copies of the original sheet of the register, on the date
11 of the application to purchase, shall be placed in the mail, postage
12 prepaid, and properly addressed to the Department of Justice in
13 Sacramento.

14 (4) If requested, a photocopy of the original shall be provided
15 to the purchaser by the dealer.

16 (5) If the transaction is one conducted pursuant to Section
17 12082, a photocopy of the original shall be provided to the seller
18 by the dealer, upon request.

19 (c) (1) Where the electronic or telephonic transfer of applicant
20 information is used, the purchaser shall be required to present clear
21 evidence of his or her identity and age, as defined in Section
22 12071, to the dealer, and the dealer shall require him or her to sign
23 his or her current legal name to the record of electronic or
24 telephonic transfer. The salesperson shall affix his or her signature
25 to the record of electronic or telephonic transfer as a witness to the
26 signature and identification of the purchaser. Any person
27 furnishing a fictitious name or address or knowingly furnishing
28 any incorrect information or knowingly omitting any information
29 required to be provided for the electronic or telephonic transfer
30 and any person violating any provision of this section is guilty of
31 a misdemeanor.

32 (2) The record of applicant information shall be transmitted to
33 the Department of Justice in Sacramento by electronic or
34 telephonic transfer on the date of the application to purchase.

35 (3) The original of each record of electronic or telephonic
36 transfer shall be retained by the dealer in consecutive order. Each
37 original shall become the permanent record of the transaction that
38 shall be retained for not less than three years from the date of the
39 last transaction and shall be provided for the inspection of any
40 peace officer, Department of Justice employee designated by the

1 Attorney General, or agent of the federal Bureau of Alcohol,
2 Tobacco, and Firearms, upon the presentation of proper
3 identification, but no information shall be compiled therefrom
4 regarding the purchasers or other transferees of firearms that are
5 not pistols, revolvers, or other firearms capable of being concealed
6 upon the person.

7 (4) If requested, a copy of the record of electronic or telephonic
8 transfer shall be provided to the purchaser by the dealer.

9 (5) If the transaction is one conducted pursuant to Section
10 12082, a copy shall be provided to the seller by the dealer, upon
11 request.

12 (d) (1) The department shall examine its records, as well as
13 those records that it is authorized to request from the State
14 Department of Mental Health pursuant to Section 8104 of the
15 Welfare and Institutions Code, in order to determine if the
16 purchaser is a person described in Section 12021, 12021.1, or
17 subparagraph (A) of paragraph (9) of subdivision (a) of Section
18 12072 of this code or Section 8100 or 8103 of the Welfare and
19 Institutions Code.

20 (2) To the extent that funding is available, the Department of
21 Justice may participate in the National Instant Criminal
22 Background Check System (NICS), as described in subsection (t)
23 of Section 922 of Title 18 of the United States Code, and, if that
24 participation is implemented, shall notify the dealer and the chief
25 of the police department of the city or city and county in which the
26 sale was made, or if the sale was made in a district in which there
27 is no municipal police department, the sheriff of the county in
28 which the sale was made, that the purchaser is a person prohibited
29 from acquiring a firearm under federal law.

30 (3) If the department determines that the purchaser is a person
31 described in Section 12021, 12021.1, or subparagraph (A) of
32 paragraph (9) of subdivision (a) of Section 12072 of this code or
33 Section 8100 or 8103 of the Welfare and Institutions Code, it shall
34 immediately notify the dealer and the chief of the police
35 department of the city or city and county in which the sale was
36 made, or if the sale was made in a district in which there is no
37 municipal police department, the sheriff of the county in which the
38 sale was made, of that fact.

39 (4) If the department determines that the copies of the register
40 submitted to it pursuant to paragraph (3) of subdivision (b) contain



1 any blank spaces or inaccurate, illegible, or incomplete
2 information, preventing identification of the purchaser or the
3 pistol, revolver, or other firearm to be purchased, or if any fee
4 required pursuant to subdivision (e) is not submitted by the dealer
5 in conjunction with submission of copies of the register, the
6 department may notify the dealer of that fact. Upon notification by
7 the department, the dealer shall submit corrected copies of the
8 register to the department, or shall submit any fee required
9 pursuant to subdivision (e), or both, as appropriate and, if
10 notification by the department is received by the dealer at any time
11 prior to delivery of the firearm to be purchased, the dealer shall
12 withhold delivery until the conclusion of the waiting period
13 described in Sections 12071 and 12072.

14 (5) If the department determines that the information
15 transmitted to it pursuant to subdivision (c) contains inaccurate or
16 incomplete information preventing identification of the purchaser
17 or the pistol, revolver, or other firearm capable of being concealed
18 upon the person to be purchased, or if the fee required pursuant to
19 subdivision (e) is not transmitted by the dealer in conjunction with
20 transmission of the electronic or telephonic record, the department
21 may notify the dealer of that fact. Upon notification by the
22 department, the dealer shall transmit corrections to the record of
23 electronic or telephonic transfer to the department, or shall
24 transmit any fee required pursuant to subdivision (e), or both, as
25 appropriate, and if notification by the department is received by
26 the dealer at any time prior to delivery of the firearm to be
27 purchased, the dealer shall withhold delivery until the conclusion
28 of the waiting period described in Sections 12071 and 12072.

29 (e) The Department of Justice may require the dealer to charge
30 each firearm purchaser a fee not to exceed fourteen dollars (\$14),
31 except that the fee may be increased at a rate not to exceed any
32 increase in the California Consumer Price Index as compiled and
33 reported by the California Department of Industrial Relations. The
34 fee shall be no more than is sufficient to reimburse all of the
35 following, and is not to be used to directly fund or as a loan to fund
36 any other program:

37 (1) (A) The department for the cost of furnishing this
38 information.

1 (B) The department for the cost of meeting its obligations
2 under paragraph (2) of subdivision (b) of Section 8100 of the
3 Welfare and Institutions Code.

4 (2) Local mental health facilities for state-mandated local costs
5 resulting from the reporting requirements imposed by Section
6 8103 of the Welfare and Institutions Code.

7 (3) The State Department of Mental Health for the costs
8 resulting from the requirements imposed by Section 8104 of the
9 Welfare and Institutions Code.

10 (4) Local mental hospitals, sanitariums, and institutions for
11 state-mandated local costs resulting from the reporting
12 requirements imposed by Section 8105 of the Welfare and
13 Institutions Code.

14 (5) Local law enforcement agencies for state-mandated local
15 costs resulting from the notification requirements set forth in
16 subdivision (a) of Section 6385 of the Family Code.

17 (6) Local law enforcement agencies for state-mandated local
18 costs resulting from the notification requirements set forth in
19 subdivision (c) of Section 8105 of the Welfare and Institutions
20 Code.

21 (7) For the actual costs associated with the electronic or
22 telephonic transfer of information pursuant to subdivision (c).

23 (8) The Department of Food and Agriculture for the costs
24 resulting from the notification provisions set forth in Section
25 5343.5 of the Food and Agricultural Code.

26 (9) The department for the costs associated with subparagraph
27 (D) of paragraph (2) of subdivision (f) of Section 12072.

28 The fee established pursuant to this subdivision shall not exceed
29 the sum of the actual processing costs of the department, the
30 estimated reasonable costs of the local mental health facilities for
31 complying with the reporting requirements imposed by paragraph
32 (2) of this subdivision, the costs of the State Department of Mental
33 Health for complying with the requirements imposed by paragraph
34 (3) of this subdivision, the estimated reasonable costs of local
35 mental hospitals, sanitariums, and institutions for complying with
36 the reporting requirements imposed by paragraph (4) of this
37 subdivision, the estimated reasonable costs of local law
38 enforcement agencies for complying with the notification
39 requirements set forth in subdivision (a) of Section 6385 of the
40 Family Code, the estimated reasonable costs of local law

1 enforcement agencies for complying with the notification
2 requirements set forth in subdivision (c) of Section 8105 of the
3 Welfare and Institutions Code imposed by paragraph (6) of this
4 subdivision, the estimated reasonable costs of the Department of
5 Food and Agriculture for the costs resulting from the notification
6 provisions set forth in Section 5343.5 of the Food and Agricultural
7 Code, and the estimated reasonable costs of the department for the
8 costs associated with subparagraph (D) of paragraph (2) of
9 subdivision (f) of Section 12072.

10 (f) (1) The Department of Justice may charge a fee sufficient
11 to reimburse it for each of the following but not to exceed fourteen
12 dollars (\$14), except that the fee may be increased at a rate not to
13 exceed any increase in the California Consumer Price Index as
14 compiled and reported by the California Department of Industrial
15 Relations:

16 (A) For the actual costs associated with the preparation, sale,
17 processing, and filing of forms or reports required or utilized
18 pursuant to Section 12078 if neither a dealer nor a law enforcement
19 agency acting pursuant to Section 12084 is filing the form or
20 report.

21 (B) For the actual processing costs associated with the
22 submission of a Dealers' Record of Sale to the department by a
23 dealer or of the submission of a LEFT to the department by a law
24 enforcement agency acting pursuant to Section 12084 if the
25 waiting period described in Sections 12071, 12072, and 12084
26 does not apply.

27 (C) For the actual costs associated with the preparation, sale,
28 processing, and filing of reports utilized pursuant to subdivision
29 (l) of Section 12078 or paragraph (18) of subdivision (b) of Section
30 12071, or clause (i) of subparagraph (A) of paragraph (2) of
31 subdivision (f) of Section 12072, or paragraph (3) of subdivision
32 (f) of Section 12072.

33 (D) For the actual costs associated with the electronic or
34 telephonic transfer of information pursuant to subdivision (c).

35 (2) If the department charges a fee pursuant to subparagraph
36 (B) of paragraph (1) of this subdivision, it shall be charged in the
37 same amount to all categories of transaction that are within that
38 subparagraph.

39 (3) Any costs incurred by the Department of Justice to
40 implement this subdivision shall be reimbursed from fees

1 collected and charged pursuant to this subdivision. No fees shall
2 be charged to the dealer pursuant to subdivision (e) or to a law
3 enforcement agency acting pursuant to paragraph (6) of
4 subdivision (d) of Section 12084 for costs incurred for
5 implementing this subdivision.

6 (g) All money received by the department pursuant to this
7 section shall be deposited in the Dealers' Record of Sale Special
8 Account of the General Fund, which is hereby created, to be
9 available, upon appropriation by the Legislature, for expenditure
10 by the department to offset the costs incurred pursuant to this
11 section, subparagraph (D) of paragraph (2) of subdivision (f) of
12 Section 12072 , Sections 12099, 12234, 12289, 12289.5, and
13 subdivisions (f) and (g) of Section 12305.

14 (h) Where the electronic or telephonic transfer of applicant
15 information is used, the department shall establish a system to be
16 used for the submission of the fees described in subdivision (e) to
17 the department.

18 (i) (1) Only one fee shall be charged pursuant to this section for
19 a single transaction on the same date for the sale of any number of
20 firearms that are not pistols, revolvers, or other firearms capable
21 of being concealed upon the person or for the taking of possession
22 of those firearms.

23 (2) In a single transaction on the same date for the delivery of
24 any number of firearms that are pistols, revolvers, or other
25 firearms capable of being concealed upon the person, the
26 department shall charge a reduced fee pursuant to this section for
27 the second and subsequent firearms that are part of that transaction.

28 (j) Only one fee shall be charged pursuant to this section for a
29 single transaction on the same date for taking title or possession of
30 any number of firearms pursuant to paragraph (18) of subdivision
31 (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

32 (k) Whenever the Department of Justice acts pursuant to this
33 section as it pertains to firearms other than pistols, revolvers, or
34 other firearms capable of being concealed upon the person, the
35 department's acts or omissions shall be deemed to be discretionary
36 within the meaning of the California Tort Claims Act pursuant to
37 Division 3.6 (commencing with Section 810) of Title 1 of the
38 Government Code.

39 (l) As used in this section, the following definitions apply:



(1) “Purchaser” means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) “Purchase” means the purchase, loan, or transfer of a firearm.

(3) “Sale” means the sale, loan, or transfer of a firearm.

(4) “Seller” means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 2. Section 12099 is added to the Penal Code, to read:

12099. (a) Except as provided in subdivision (b), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventory of short-barreled shotguns and short-barreled rifles.

(b) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.

SEC. 3. Section 12234 is added to the Penal Code, to read:

12234. (a) Except as provided in subdivision (b), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventory of machine guns.

(b) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.

SEC. 4. Section 12289.5 is added to the Penal Code, to read:

12289.5. (a) Except as provided in subdivision (b), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventory of assault weapons.

(b) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage

1 purposes, and to reconcile inventory, once every five years, or
2 more frequently if determined by the department.

3 SEC. 5. Section 12305 of the Penal Code is amended to read:

4 12305. (a) Every dealer, manufacturer, importer, and
5 exporter of any destructive device, or any motion picture or
6 television studio using destructive devices in the conduct of its
7 business, shall obtain a permit for the conduct of that business from
8 the Department of Justice.

9 (b) Any person, firm, or corporation not mentioned in
10 subdivision (a) shall obtain a permit from the Department of
11 Justice in order to possess or transport any destructive device. No
12 permit shall be issued to any person who meets any of the
13 following criteria:

14 (1) Has been convicted of any felony.

15 (2) Is addicted to the use of any narcotic drug.

16 (3) Is a person in a class prohibited by Section 8100 or 8103 of
17 the Welfare and Institutions Code or Section 12021 or 12021.1 of
18 this code.

19 (c) Applications for permits shall be filed in writing, signed by
20 the applicant if an individual, or by a member or officer qualified
21 to sign if the applicant is a firm or corporation, and shall state the
22 name, business in which engaged, business address and a full
23 description of the use to which the destructive devices are to be put.

24 (d) Applications and permits shall be uniform throughout the
25 state on forms prescribed by the Department of Justice.

26 (e) Each applicant for a permit shall pay at the time of filing his
27 or her application a fee not to exceed the application processing
28 costs of the Department of Justice. A permit granted pursuant to
29 this article may be renewed one year from the date of issuance, and
30 annually thereafter, upon the filing of a renewal application and the
31 payment of a permit renewal fee not to exceed the application
32 processing costs of the Department of Justice. After the
33 department establishes fees sufficient in amount to cover
34 processing costs, the amount of the fees shall only increase at a rate
35 not to exceed the legislatively approved cost-of-living adjustment
36 for the department.

37 (f) Except as provided in subdivision (g), the Department of
38 Justice shall, for every person, firm, or corporation to whom a
39 permit is issued pursuant to this article, annually conduct an

1 inspection for security and safe storage purposes, and to reconcile
2 the inventory of destructive devices.

3 (g) A person, firm, or corporation with an inventory of fewer
4 than five devices that require any Department of Justice permit
5 shall be subject to an inspection for security and safe storage
6 purposes, and to reconcile inventory, once every five years, or
7 more frequently if determined by the department.

8 (h) Subdivisions (f) and (g) shall not apply to individuals
9 possessing an assault weapon pursuant to a permit issued by the
10 Department of Justice for noncommercial purposes.

11 SEC. 6. The duties imposed on the department by this act are
12 to be ~~managed within existing budgetary resources~~ *funded* from
13 the Dealers' Record of Sale Special Account.

